

RESPONSE TO MOTION TO SUPPRESS

When officer observed that the defendant had violated a city code, that violation gave the officer reasonable grounds to make an investigatory stop of the vehicle. Once he observed the signs of alcohol impairment, the officer had probable cause to arrest the defendant for DUI.

The State of Arizona, by and through undersigned counsel, opposes the defendant's motion to suppress and asks this Court to deny the motion for the reasons set forth in the following Memorandum.

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS:

On May 22, 1996, at approximately 11:13 p.m., Officer Sexton was on random patrol in the area of 2100 West Grandview Drive, when he observed a large amount of garbage on a dirt lot. Because there had been a chronic problem of dumping in that area, Officer Sexton shined his spotlight into the lot and saw the reflection of the taillights of a vehicle parked in the dirt lot. There was no indication at that time that the vehicle had been involved in the dumping, since it was approximately 100 to 150 feet away from the trash; however, Officer Sexton observed at least one occupant moving around inside the vehicle. The vehicle's presence on the lot was in violation of Phoenix City Code 36-62, a class 1 misdemeanor. This ordinance prohibits driving on or across any portion of a vacant lot, other than on an established dust proof driveway.

Officer Sexton decided to investigate the defendant's presence on the property. To make contact with the driver, he waited for the vehicle to leave the lot by parking at the logical exit location, 21st Avenue and Grandview Drive. He waited for approximately two minutes; the vehicle then left the lot, entered the street, and turned eastbound on Grandview Drive. The vehicle, a light blue Nissan Pathfinder, accelerated quickly as

Officer Sexton followed and paced it at 45 miles per hour in a 30 mph zone. At 19th Avenue and Grandview, while he was stopped at a stop sign, Officer Sexton activated his car's overhead lights. The Nissan drove on for a short distance and pulled into a parking lot at 1900 West Bell Road.

Officer Sexton approached the defendant to ask about his business on the property and to inform the defendant of his violation of the City Code. The defendant showed signs and symptoms of impairment and was subsequently arrested and charged with two counts of aggravated DUI.

LAW:

The defendant claims that Officer Sexton was unaware that he was engaging in any criminal activity, and, therefore, argues that the stop was illegal because the officer had no reasonable suspicion to stop or detain the defendant. The defendant further claims that the unlawful stop should result in preclusion of any evidence seized as a result of the stop.

An investigatory stop of a motor vehicle constitutes a "seizure" under the Fourth Amendment, "but because such stops are less intrusive than arrests, they do not require the probable cause necessary to issue an arrest warrant." *State v. Gonzales-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996), citing *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 881, 95 S.Ct. 2547, 2578, 2580, 45 L.Ed.2d 607 (1975).

Whenever the police have probable cause to believe that a driver has committed a civil traffic violation, the police may conduct an investigatory stop of the driver's vehicle, regardless of the officers' actual subjective motivations. *Whren v. United States*,

517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996); *State v. Ossana*, 199 Ariz. 459, 461, 18 P.3d 1258, 1260 (App. 2001). Police officers may also stop an individual for general investigative purposes. A brief stop of an automobile in order to determine a person's identity may be reasonable in light of the facts known to the officer at the time. *State v. Jarzab*, 123 Ariz. 308, 599 P.2d 761 (1979). An investigative stop will be deemed reasonable when the officer demonstrates some basis from which the court can determine that the police were not acting arbitrarily or harassing the defendant. *Id.* at 310, 599 P.2d at 763.

An officer may detain a person in order to investigate possible criminal activity so long as the officer can point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the suspicion that a particular person has committed, was committing, or is about to commit a crime. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 1879-80, 20 L.Ed.2d 889 (1968); *State v. Blackmore*, 186 Ariz. 630, 632-33, 925 P.2d 1347, 1349-50 (1996); *State v. Ochoa*, 189 Ariz. 454, 461, 943 P.2d 814, 821 (App. 1997); *State v. Robles*, 171 Ariz. 441, 831 P.2d 440 (App. 1992).

Such investigatory stops are less intrusive than actual arrests and therefore may be made under circumstances that would not be sufficient to constitute probable cause for the issuance of an arrest warrant. *United States v. Brignoni-Ponce*, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1982); *State v. Graciano*, 134 Ariz. 35, 653 P.2d 683 (1982). Courts have agreed that a stop must be based upon what is described as an "articulated" or "founded" suspicion by the officer, who must be able to state an "articulable reason" for the stop. *Brignoni-Ponce, supra*.

In *United States v. Cortez*, 449 U.S. 411, 101 S. Ct. 690, 66 L.Ed.2d 621 (1981), the court set out a two-prong “totality of the circumstances” test. The first part requires an assessment of all the circumstances, based upon a subjective view and considering the officer’s training and experience. The second part of the test requires that the assessment of all the circumstances raise a justifiable suspicion that the particular individual to be detained is involved in criminal activity. *Id.* at 418, 101 S.Ct. at 695.

In *Brinegar v. United States*, 338 U.S. 160, 176, 69 S.Ct. 1302, 1311, 93 L.Ed. 1879 (1949), the United States Supreme Court recognized that police officers must deal in probabilities and not legal technicalities. Hence, the courts must take into consideration the real world with which a police officer must deal in order to determine the reasonableness of the officer’s actions.

The defendant errs in stating that Officer Sexton indicated that he was unaware of any criminal activity connected to the Nissan vehicle or its occupants. In his interview of July 12, 1996, Officer Sexton specifically stated that he stopped the vehicle because it had violated Phoenix City Code 36-64, which states:

No person shall operate a vehicle on or across any portion of a vacant lot other than on an established dust proof driveway.

That section of the City Code is a first class misdemeanor with a penalty of six months in jail and/or a \$2,500.00 fine. Officer Sexton observed the occupied vehicle parked on a vacant lot that had a continuing problem of dumping. This lot had no established dust proof driveway; therefore, by the fact that the vehicle was parked on the lot, logically the officer knew that the vehicle had to have violated the City Code. The officer also deduced that the vehicle was not involved in the dumping of trash in the lot due to the

distance between the vehicle and the trash. So as not to violate the City Code himself, the officer opted to wait for the defendant's vehicle to leave the lot and to then contact the defendant as to his purpose for being on the lot and to advise him that he had violated the City Code. Violating Phoenix City Code 36-62 is a criminal charge, and the officer had reasonable and articulable suspicion that the defendant had committed the violation under *Terry* and *Blackmore*, *supra*.

In *United States v. Cortez*, 449 U.S. 411, 418, 101 S.Ct. 690, 695, 66 L.Ed.2d 621 (1981), the United States Supreme Court recognized that trained law enforcement officers often draw inferences and make deductions "that might well elude an untrained person." The Court further said that when used by "trained law enforcement officers, objective facts, meaningless to the untrained, can be combined with permissible deductions from such facts to form a legitimate basis for suspicion of a particular person and for action on that suspicion." *Id.* Here, after the officer contacted the defendant, it was clear to him from his experience and training that the defendant exhibited signs and symptoms of intoxication, namely, his eyes were bloodshot and his breath had a strong odor of alcohol. At that point, the officer had reason to proceed further and to ask the defendant to step out of his car to perform field sobriety tests. Therefore, the officer did not violate any of the defendant's constitutional rights and the evidence is all admissible.

CONCLUSION:

The State submits that Officer Sexton did have articulable and reasonable suspicion to stop the defendant based on the defendant's violating the city code. Therefore, the State asks this Court to deny the defendant's motion to suppress all evidence seized from the defendant in this case.